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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,185	12/08/2000	Donald L. Schilling	GBTI94US	6859

7590 12/17/2001

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT PAPER NUMBER

2664

DATE MAILED: 12/17/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Handwritten signature

Office Action Summary

Application No.

09/732,185

Applicant(s)

SCHILLING, DONALD L.

Examiner

Steven HD Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Pre-amendment

1. This action is in response to the pre-amendment filed on 12/8/2000. Claims 1-15 have been canceled and claims 16-50 are pending in the application.

Specification

2. The disclosure is objected to because of the following informalities: the applicant should inserts the recitation at line 1, " This application is a division of the application 09/183,316 which is filed 10/30/1998, now USP 6262971, which is a continuation application of U.S. patent application Ser. No. 08/692,782, filed Aug. 2, 1996, entitled PACKET-SWITCHED SPREAD-SPECTRUM SYSTEM now U.S. Pat. No. 5,862,133. The benefit of the earlier filing date of the parent patent application is claimed for common subject matter pursuant to 35 U.S.C. .sctn.120..

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 16-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of U.S. Patent No. 6262971. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of patent 6262971 are encompassed the limitations of the claims 16-50 of the application. The application's claims merely broaden the scope of the patented claims by replacing claiming some elements (i.e plurality of product devices, chip sequence means) with a spread spectrum means. The application's claims are nearly identical in every other respect to the patent claims. Therefore, the application's claims are simply broader versions of the patented claims. It is the examiner's position that broadening the patented claims by not claiming some of claim elements (i.e plurality of product devices, chip sequence means) of the patented claims would have been obvious to one of ordinary skill in the art in view of the patented claims by replacing these elements with a spread spectrum means. It is important to note that the instant application is a continuation or division of the application, which yielded the patent (US Pat 6262971) used herein as the basis for the obviousness type of double patenting rejection. The applicant is attempting to broaden the parent application's claims by eliminating some of the claim elements in the continuation at issue here. If allowed, the application at bar would unjustly extend applicant patent protection beyond the statutory period of seventeen years while, at the same time, granting broader protection to the application.

5. Claims 16-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent 5862133. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because the claims of patent 5862133 are encompassed the limitations of the claims 16-50 of the application. The application's claims merely broaden the scope of the patented claims by not claiming some elements (i.e plurality of product devices, plurality of receiver, encoder, decoder). The application's claims are nearly identical in every other respect to the patent claims. Therefore, the application's claims are simply broader versions of the patented claims. It is the examiner's position that broadening the patented claims by not claiming some of claim elements (i.e plurality of product devices, plurality of receiver, encoder, decoder) of the patented claims would have been obvious to one of ordinary skill in the art in view of the patented claims. It is important to note that the instant application is a continuation or division of the application, which yielded the patent (US Pat 5862133) used herein as the basis for the obviousness type of double patenting rejection. The applicant is attempting to broaden the parent application's claims by eliminating some of the claim elements in the continuation at issue here. If allowed, the application at bar would unjustly extend applicant patent protection beyond the statutory period of seventeen years while, at the same time, granting broader protection to the application.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 16-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (US Patent 5166951) in view of Koyanagi (US 5291486).

Regarding claims 16, 20-22, 25-27, 31-33, 36-38, 42-43 and 46-50, Schilling discloses a communication system which a packet transmitter including a demultiplexer for demultiplexing the encoded data into a plurality of sub data sequence (Fig 5, Ref 405), spreading-spectrum means for spread-spectrum processing each of the sub data sequence signals by respective chip sequence signal, thereby generating a plurality of spread-spectrum channels, with a respective chip sequence signal different from a each chip sequence signal in a plurality of chip sequence signals for spread-spectrum processing the plurality of sub data sequence signals, respectively, and with the plurality of chip sequence signals commonly used by the plurality of packet transmitters (Fig 5, Ref 407-408); combiner means for algebraically combining the plurality of spread spectrum channels as a multichannel spread spectrum signal (Fig 2, Ref 105), transmitter means for transmitting at a carrier frequency the packet-spread-spectrum signal using radio waves over a communications channel (Col 19, lines 12-16) and memory means for storing the data is well known in the art. However, Schilling fails to disclose a header means. In the same field of endeavor, Koyanagi teaches the use of header device for adding header for a plurality of data signal (Fig 1, Ref 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of header device to add a packet header into a multiplexing data as taught by Koyanagi into the packet multiplexing system of Schilling in order to add the controlling information into the packet so that providing timing and controlling data to receiver, thereby, enhancing the system with higher efficiency.

Regarding claims 17-19, 28-30 and 39-41, However, Schilling fails to fully disclose the claimed invention. However, the examiner takes official notice that encoder means for encoding, scrambling or encrypting is well known and expected in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply an encoder having the function as encryption, scramble into Schilling's transmitter in order to provide security for data.

Regarding claims 23-24, 34-35 and 44-45, However, Schilling fails to fully disclose the claimed invention. However, the examiner takes official notice that a header, which concatenates to the channels is well known and expected in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a header device for generating a preamble to the channels into Schilling's transmitter in order to allow the receiver and transmitter to use the information in the header to obtain the information in the channels.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (703) 305-4366. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Steven HD Nguyen
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December 12, 2001